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Application No.: 10/057,959Docket No.: 30012961-2 US (1509-269)**REMARKS**

Claims 11 and 23 have been amended as suggested by the Examiner to overcome the objection to them.

The indication of claims 12-21 being allowed is noted.

Applicants traverse the rejection of claims 1-11, 22 (that depends on claim 1) and 23 under 35 USC 101. Independent claim 1 is directed to an audio system comprising an audio source, a playing terminal, and an audio transducer arrangement. Independent claim 10 defines an audio system including an audio playing arrangement and an audio production arrangement. The audio source is required to derive an audio component having certain characteristics. The Office Action says the claim "is in reality seeking patent protection of the computer program as evidenced by claim 20." This position is contrary to law, as discussed, for example, in MPEP Section 2106(2)(a) which includes the statement:

If a claim defines a useful machine or manufacture by identifying the physical structure of the machine or manufacture in terms of its hardware or hardware and software combination, it defines a statutory product.

Since claims 1 and 10 define a hardware and possible software combination, including hardware components in the form of a playing terminal, an audio transcriber (claim 1 only) arrangement and a component in the form of an audio source that may include hardware or software, the quoted part of the Office Action is not applicable to claim 1 or 10.

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In so far as language such as "to cause transducers...to derive aural outputs" the Examiner is reminded that a properly drafted apparatus claim is infringed when the goods are sold, prior to being put into use. Further, the court in *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976) held

"limitations such as "members adapted to be positioned" and "portions...being resiliently dilatable" whereby said housing may be slidably positioned "serve to precisely define present structural attributes of interrelated component parts of the claimed assembly."

The criticized language of claim 1 is somewhat similar.

Certainly, limitations about different bit rates in claims 1, 10 and 23 are physical limitations. In addition, claim 23 defines a source computer arrangement that is a controller for plural audio sources. The source computer arrangement of claim 23 includes plural audio sources (physical devices). Claim 23 as such is concerned with a machine (a statutory class) that can include the computer-usable medium of claim 20. Thus, claim 23 is similar to a temperature controller. A claim on a temperature controller does not have to positively define a temperature measuring device and a heating and/or cooling device. If the Examiner persists in this rejection, he is requested to cite the relevant authority to support his position.

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To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Respectfully submitted,

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